

Internal Revenue Service

District Director

Date: FEB 19 1992

Department of the Treasury

Person To Contact:

Telephone Number:

Employer ID Number:

File Folder Number:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. We also, at your request, sought Technical Advice from the National Office.

On the basis of the Technical Advice Memorandum dated November 20, 1991, we conclude that you do not meet the requirements of section 501(c)(3) of the Code. We have enclosed a copy of the above Technical Advice Memorandum with this letter. Contributions to your organization are not deductible under code sections 170.

You are required to file Federal income tax returns on Form 1120.

Since this determination is based on national office technical advice, you have no further appeal rights and this is our final letter.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

Sincerely,

District Director

Enclosure:  
Technical Advice

NOV 20 1991

INTERNAL REVENUE SERVICE

National Office Technical Advice Memorandum

District Director  
Atlanta, Georgia

Taxpayer Name:

[REDACTED]

Taxpayer Address:

[REDACTED]

Taxpayer Identification Number:

[REDACTED]

Years Involved:

[REDACTED]

Date of Conference:

None

ISSUES

Whether an organization that was created to revitalize a commercial section of a city is exempt under section 501(c)(3) of the Code.

FACTS

The organization was incorporated to help in the revitalization plans for the downtown area of a city. The area to be revitalized is not an economically depressed area. The organization is not an outgrowth of a governmental entity nor is it controlled or created pursuant to state or local statutes.

The organization is operated for the following purposes: plan, research and assist in the implementation of projects for the reason of a) dilapidation, deterioration, obsolescence, sanitation, open space, or the existence of conditions which endanger life or property by fire or other causes; b) defective or inadequate street layout, faulty lot layout, deterioration of site improvements and diversity of ownership; or c) under utilization of the area which prevents effective redevelopment efforts.

The organization also indicates it will promote and assist in city beautification projects by cooperating with municipal authorities and by educating the public as to the advantages of

[REDACTED]

beautifying the city through the use of newspaper, radio and distributed literature. The organization also states it will support charitable and educational organizations whose primary interest is to preserve and develop the beauty of the city. Other activities in which the organization will be involved include: the sponsoring of a business\educational seminar to be open to the general public and to distribute community information publications to inform the general public of its activities and other information relevant to downtown revitalization.

The organization's "Revitalization Work Plan" indicates the organization's involvement in business promotion through retail sales events, image development, development of a logo for the commercial district of the community, and the celebrating of new business openings. Other goals mentioned in this plan include the following: increased frequency of sweeping of streets, the appointment of a Parking Task Force to work with the city on long range parking development, the development of an incentive design package to encourage design improvements, holding a downtown clean up day with schools, investigate street banners, and the improvement to the appearance of store fronts.

The organization also indicates that it will be involved in the coordinating of zoning, building code information and other public regulatory activities affecting the redevelopment site, and providing limited assistance and advice to small businesses.

In a letter dated [REDACTED], the organization indicates that its past, present and future goals are to improve the quality of life, general working and shopping conditions in the targeted area. The letter also indicates the organization has approved the renovation of [REDACTED] store fronts and has received applications for the renovation of [REDACTED] more businesses. Upon repair the organization will reimbursement each business \$[REDACTED] for the renovation of its store front

The organization indicates that the National Trust for Historic Preservation, launched a Main Street program in the city to help develop the targeted area. The organization was unable to submitted any information indicating that any of the buildings that the organization is helping to revitalize are listed on "the National Register" or have historical or architectural significant.

#### LAW AND ANALYSIS

Section 501(c)(3) of the Internal Revenue Code describes corporations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on

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propaganda, or otherwise attempting to influence legislation , . . . and which does not participate in, or intervene in . . . any political campaign . . . ."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Better Business Bureau v. United States, 1326 U.S. 279 (1945), provides that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single noncharitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the lessening of the burdens of government.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) unless it serves public rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

Some organizations which have been formed to assist in the economic development of a particular geographic area or to assist existing or new businesses located in such an area have qualified for exemption under section 501(c)(3) of the Code. To be exempt under section 501(c)(3), such organizations must show that they are organized and operated exclusively for charitable purposes. As stated in section 501(c)(3)-1(d)(2) of the regulations, the term "charitable" as used in section 501(c)(3) includes the relief of the poor and distressed, lessening the burdens of government, and the promotion of social welfare by organizations designed to lessen neighborhood tension, eliminate prejudice and discrimination or combat community deterioration.

Rev. Rul. 74-587, 1974-2 C.B. 162 held that an organization formed to provide financial assistance to various businesses through low-cost or long term-loans, or through the purchase of an equity interest in the businesses assisted qualifies as exempt

under section 501(c)(3). The organization devoted its resources to programs to stimulate economic development in an economically depressed area, inhabited mainly by low-income minority or other disadvantaged groups.

Rev. Rul. 76-419, 1976-2 C.B. 146 provides that the purchase of land by an organization in an economically depressed area and the conversion of that land to an industrial park with leases at favorable rates to industrial tenants, who are required to hire and train unemployed and underemployed residents of the area, is exempt under section 501 (c)(3) of the Code.

The rationale for exemption in these rulings includes relieving poverty and lessening neighborhood tensions caused by the lack of jobs in the area; combatting community deterioration by establishing new businesses, rehabilitating existing ones, and eliminating conditions of blight; and lessening prejudice and discrimination against minorities by demonstrating that such groups can operate a business if given the opportunity.

Rev. Rul. 77-111, 1977-1 C.B. 144 involved two organizations. In situation one the organization was formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations. In situation two the organization was formed to revive retail sales in an area of economic decline by constructing a shopping center that would complement the area's existing retail facilities. Neither organization was held to be exempt, because neither organization targeted minority-owned businesses or limited their benefits to needy individuals or businesses.

The revenue ruling holds that although the organizations' activities might contribute to achieving section 501(c)(3) purposes, their overall thrust was to promote business as an end in itself rather than to accomplish exclusively exempt purposes. The organizations in situation one and two do not limit their assistance to businesses located in a deteriorated area that could not obtain conventional financing. The organization in situation one assists businesses which are not owned by minority groups and which are not experiencing difficulty because of their location in a depressed area.

[REDACTED]

The activities of the organization in situation two result in major benefits accruing to the stores that will locate within the shopping center. It does not limit its aid to businesses that are owned by members of a minority group or to businesses that would only locate within the area because of the existence of the center. The end result is that the organization's activities are directed to benefit the businesses in the shopping center rather than exclusively to accomplish section 501(c)(3) purposes.

The information the organization submitted indicates that the city in which the economic development is to occur is not an economically depressed area. There is no evidence of federal or state designation that the city is a depressed area and unemployment figures are not available for the targeted area. There is no evidence that businesses in the targeted area have a significant number of minority employees, or the targeted businesses are controlled or substantially operated by minorities. Further there is no proof that the businesses the organization provides services for are required or are encouraged to hire a significant number of presently unemployed persons and to train those persons. Rev. Rul. 77-111 makes it clear that promoting business in an economically declining area, by itself, would not constitute a charitable activity within the contemplation of section 1.501(c)(3)-1(d)(2) of the regulations. Accordingly, under section 1.501(c)(3)-1(c)(1) of the regulations, the organization cannot be regarded as "operated exclusively" for one or more exempt purposes because more than an insubstantial part of its activities is not in furtherance of an exempt purpose. This nonexempt purpose is sufficient in degree to preclude the organization from qualifying for tax exemption under the rationale of Better Business Bureau V. U.S., *supra*.

In addition the facts submitted do not indicate that the organization meets the requirements of lessening the burdens of government. Rev. Rul. 85-1, 1985-1 C.B. 177, sets out a two-part test for determining whether an organization's activities are lessening the burdens of government. To meet this test it is necessary to determine whether the governmental unit considers the organization's activities to be its burden and whether these activities actually lessen the burdens of the government. An activity is a burden of the government if there is an objective

[REDACTED]

manifestation by the governmental unit that it considers the activities of the organization to be its burden. The file contains no information which would indicate that the organization's activities are or were ever a government burden of the City or that the city ever delegated its authority to run such a program. Further there is no strong interrelationship between the city and the organization which would provide evidence that the governmental unit considers the activity to be its burden. The organization is not lessening the burdens of government within the meaning of section 501(c)(3) of the Code.

Further, while the organization's downtown revitalization program does have some broad public benefit, it also results in direct and substantial private benefit to the downtown businesses with the meaning of section 1.501(c)(3)-1(d)(ii) of the regulations

Accordingly, based on the information submitted, the organization does not meet the requirements of section 501(c)(3) of the Code.

#### CONCLUSION

An organization that was created to revitalize a commercial section of a city is not exempt under section 501(c)(3) of the Code.

-END-

Internal Revenue Service

Department of the Treasury

District Director

Date: OCT 03 1990

Person to Contact:

Telephone Number:

Employer ID Number:

File Folder Number:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [REDACTED], in the State of [REDACTED] to help in the revitalization plans for the downtown area of [REDACTED]. You have indicated that, to the best of your knowledge, the area is not an economically depressed area.

You have listed your specific purposes as the following: plan, research and assist in the implementation of projects for the reason of a) dilapidation, deterioration, obsolescence, sanitation, open space, or the existence of conditions which endanger life or property by fire or other causes; b) defective or inadequate street layout, faulty lot layout, deterioration of site improvements and diversity of ownership; or c) underutilization of the area which prevents effective redevelopment efforts.

In addition to the above, you have indicated the organization will promote and assist in city beautification projects by cooperating with municipal authorities and by educating the public as to the advantages of beautifying the city through the use of newspapers, radio and distributed literature.

Furthermore, it is also indicated the organization will support charitable and educational organizations whose primary interest is to preserve and develop the beauty of the city. Other activities in which the applicant will involve itself include: the sponsoring of a business/educational seminar, to be open to the general public; and to publish community information publications to inform the general public of its activities and other information relevant to downtown revitalization. You have represented that such publications include, but are not limited to the followings:



- [REDACTED]
- a) Planning studies, such as the compilation of financial data relevant to area business by type and possible others.
  - b) An organizational brochure or brochures.
  - c) Tourist and visitor information brochures, maps, tour guides, etc.
  - d) Events fliers, pamphlets, posters, or brochures.
  - e) Statistical reports for summaries.
  - f) A regular newsletter or newsletters. Selected publications will be sold to the general public at a cost determined to repay printing costs for the publications.

The [REDACTED] plan accompanying the application for exemption is indicative of the applicant's involvement in business promotion through retail sales events, image development, development of a logo for the commercial district of [REDACTED], and the celebrating of new business openings and rehabilitations with publicity. Other goals mentioned in this plan include the following: increased frequency of sweeping streets, to have the city to study speeding downtown, the appointment of a Parking Task Force to work with the City on long range parking development, the development of an incentive design package to encourage design improvements, holding a downtown clean up day with schools, investigate street banners and giving consideration to the waiving of building permit fees for storefront rehabilitations.

Additionally, you have indicated the applicant will be involved in coordinating zoning, building code information and other public regulatory activities affecting the redevelopment site, and providing limited assistance and advice to small businesses.

In the letter dated [REDACTED], from the applicant's authorized representative, [REDACTED], it is stated that the applicant's past, present, and future goals are to improve the quality of life, general working and shopping conditions of the [REDACTED] area. In the same correspondence, reference is made to the approval and renovation of [REDACTED] store front locations with 3 businesses in the application process - the application process referred to is for the \$[REDACTED] reimbursement for storefront renovation that business may receive from [REDACTED]. This reimbursement program, also known as the [REDACTED] mentioned in the [REDACTED] newspaper clipping which accompanied the previously referenced correspondence.



The Main Street program revitalizes downtown buildings to house new economic functions and to become the basis for marketing a more distinctive image of the downtown to shoppers, residents, investors, and visitors.

Section 501(c)(3) of the Internal Revenue Code provides for recognition of exemption from Federal income tax of organizations which are organized and operated exclusively for, among other things, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

The Supreme Court held in Better Business Bureau v. United States, 326 U.S. 279 (1945), that a single nonexempt purpose, if substantial in nature, would preclude an organization from qualifying under section 501(c)(3) of the Code.

Revenue Ruling 74-587, 1974-2 C.B. 162, held exempt an organization that was providing financial assistance to business enterprises in economically depressed areas through low-cost or long-term loans, or through the purchase of equity interests in the businesses being assisted.

Revenue Ruling 76-419, 1976-2 C.B. 146, exempted an organization that utilized favorable lease terms as an inducement for business enterprises to locate in industrial parks in an economically depressed area which would result in the hiring and training of the underemployed and unemployed in the area. (Note that Revenue Ruling 81-284, 1981-2 C.B. 130 amplified Revenue Ruling 74-587.)

Revenue Ruling 77-111, 1977-1 C.B. 144, involved two organizations. The first was formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations. The second organization's purpose was to revive retail sales in an area of economic decline by constructing a shopping center that would complement the area's existing retail facilities. Neither organization was held to be exempt, because neither organization targeted minority-owned businesses. The organizations both operated in a depressed area, but neither limited their benefits to needy individuals or businesses.

In Revenue Ruling 74-587, above, the organization not only targeted its programs to high density urban areas inhabited by mainly low-income groups, it also restricted eligibility for its programs to those businesses that could not otherwise obtain funds through conventional commercial sources because of the financial risks, or because of being a member of a minority or other disadvantaged group. Similarly, in Revenue Ruling 76-419, above, the organization not only located its industrial parks in a blighted area, it also gave preference to prospective tenants with hiring policies conforming to current fair employment legislation, and which agreed to hire a significant number of presently unemployed persons in the area and to train them in needed skills.

In contrast to Revenue Ruling 74-587 and 76-419, you have indicated the targeted group to benefit mostly will be the businesses located in the downtown area of Loris. Furthermore, it has been indicated that there are no eligibility requirements to be a member, and that the area is not an economically depressed area.

On the basis of these rulings, we conclude that your organization does not combat community deterioration, within the meaning of section 501(c)(3) of the Code.

Your revitalization program is primarily designed to benefit the downtown businesses and this is not an exempt activity. Therefore, according to section 1.501(c)(3)-1(c)(1) of the regulations, you cannot be regarded as 'operated exclusively' for one or more exempt purposes because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. This nonexempt purpose is sufficient in degree to preclude you from qualifying for tax exemption under the rationale of Better Business Bureau v. United States.

Furthermore, while your downtown revitalization program does have some broad public benefit, it also results in direct and substantial private benefit to the downtown businesses within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Because you fail to meet the operational test described in the regulations, you are not exempt from income tax under section 501(c)(3) of the Code.

[REDACTED]

Classification under section 501(c)(6) has been discussed with your authorized representative, and it has been clearly indicated that the organization does not wish to pursue exemption under that section of the Code. Consequently, you are not exempt under any other section of the Code. Contributions to you are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we have not received an appeal within 30 days, we will issue a final adverse determination letter. Your failure to exercise your appeal rights will be considered by the Internal Revenue Service as a failure to exhaust your available administrative remedies.

Sincerely,

[REDACTED]

[REDACTED]

District Director

Enclosure!  
Publication 892